

507 **Q. Do you have any comments about the issues associated with single billing offered by**  
508 **suppliers?**

509 **A.** Yes. The issues may sound difficult, but the problems can be worked through, as the electric  
510 utilities have demonstrated. Nicor Gas should be able to handle these problems also.

511  
512 **Q. Please discuss the differences between suppliers operating under single billing tariffs,**  
513 **and suppliers (and others) performing single billing activities as account agents.**

514 **A.** The chief difference between account agents and suppliers is that account agents may not have  
515 to follow Commission rules, or even Nicor Gas' tariffs, when they perform the typical duties of  
516 an account agent, such as receiving a customer's correspondence, sending bills to customers,  
517 and paying those bills.

518  
519 With respect to single billing, one difference between a supplier performing single billing as an  
520 account agent and a supplier performing single billing under a Nicor Gas single billing tariff is  
521 that, under account agency, the customer is generally always responsible for the payment of its  
522 bills, even though the customer's bill is sent to the account agent. In contrast, a single billing-  
523 supplier can be made responsible for its customers' distribution bills.

524  
525 With respect to marketing, at least in the electric industry, account agents may have fewer  
526 restrictions as to how their bills are formatted. Specifically, it is unclear whether an account

agent, even if it is a RES, must follow Commission rules when it sends bills to customers, such as the rule that describes how bills should be formatted.

**Q. You stated above that Nicor Gas should allow suppliers to offer single billing services. You also stated that Nicor Gas should allow suppliers or other entities to function as account agents. Please elaborate.**

**A.** I would prefer to allow suppliers to determine whether they wish to offer single billing services pursuant to a Nicor Gas tariff or whether they wish to perform those activities as account agents. And, while it would not be my preference, it is also possible that Nicor Gas could perform single billing, and account agents could be permitted to exist. My point is that suppliers should be permitted to offer single billing services.

From the above discussion, it might sound problematic if suppliers act as account agents. However, account agents do fill a useful market role. Also, a number of topics that would need to be addressed if a single billing program is to exist, even if the program were offered by Nicor Gas, might not have to be addressed if suppliers could perform as account agents. These problems include the seven topics discussed above. I would acknowledge that having suppliers acting as account agents brings a few new problems, which are identified in the Staff report.

**Q. Are there any other matters associated with single billing that you would like to mention?**

548 A. Yes. It is important that Nicor Gas provide suppliers with a clear description of the single billing  
549 policies that are applicable to the Customer Select Program.

550

551 CONSUMER ISSUES - RESPONSE TO GCI WITNESS MS. ALEXANDER

552

553 Q. Ms. Alexander states that the Commission should require suppliers to disclose the  
554 contract terms with their new customers via a "Terms of Service" disclosure, written in  
555 a plain language format. GCI Ex. 1.0, pp. 19-20. Please comment.

556 A. I agree that the terms and conditions contained in the suppliers' contracts should be presented  
557 to customers in such a way as they could not be misunderstood by even the most  
558 unsophisticated customer. The issue of how suppliers may present marketing offers to  
559 residential customers and small-use customers commercial customers was addressed in Section  
560 16-115A(e) of the "Electric Service Customer Choice Law and Rate Relief Law of 1997",  
561 which reads in part as follows:

562 (e) An alternative retail electric supplier shall comply with the following requirements with  
563 respect to the marketing, offering and provision of products or services to residential  
564 and small commercial retail customers:

565

566 (i) Any marketing materials which make statements concerning prices, terms and  
567 conditions of service shall contain information that adequately discloses the  
568 prices, terms and conditions of the products or services that the alternative retail  
569 electric supplier is offering or selling to the customer.

570

571 (ii) Before any customer is switched from another supplier, the alternative retail  
572 electric supplier shall give the customer written information that adequately  
573 discloses, in plain language, the prices, terms and conditions of the products and  
574 services being offered and sold to the customer.

575

576

I recommend that similar requirements be imposed on suppliers operating in the Customer Select program.

Additionally, the tariffs of the electric utilities generally contain provisions that impose related requirements on electric suppliers. The disclosure that electric suppliers operating in the service territory of MidAmerican Electric Company must present to their customers is attached to my testimony as ICC Staff Exhibit 5.3. Similar requirements should be imposed on Customer Select suppliers.

**Q. Ms. Alexander offers a number of recommendations regarding enrollment and switching. GCI EX. 1.0, pp. 26-28. Please comment.**

**A.** Ms. Alexander states that Nicor Gas' tariffs should reflect Commission policy decisions with respect to customer enrollment with suppliers. I presume that Ms. Alexander is recommending that the Commission, in its order in this case, should set forth certain procedures and guidelines and direct Nicor Gas to incorporate those procedures and guidelines into its tariffs.

**Q. Ms. Alexander recommends that the Commission should set forth minimum procedures, to be incorporated into Nicor Gas' tariffs, that suppliers would have to follow when signing up customers in the Customer Select program. Ibid., p. 27. Please comment.**

597 A. I agree that it is important to have consumer protection procedures associated with enrollment  
598 identified in Nicor Gas' tariffs. Currently, with certain exceptions, the tariffs are rather vague as  
599 to suppliers' responsibilities with respect to how they sign up customers, with the major  
600 exception being that each supplier must "warrant" that it has obtained each customer's  
601 authorization that the customers wish to switch to the supplier's service.  
602

603 The question of consumer protection with respect to customer enrollment has been addressed in  
604 the Illinois electric choice programs by requiring each electric supplier to obtain a "Letter of  
605 Agency" ("LOA") from each of the customers that it signs up. The purpose of the LOA is to  
606 discourage suppliers from switching customers without their authorization. The content of the  
607 Letter of Agency document is described in "The Consumer Fraud and Deceptive Business  
608 Practices Act" (815 ILCS 50-5/2EE). My understanding is that these items are reflected in  
609 each electric utility's tariffs.  
610

611 My understanding is, also, that each supplier must retain the LOAs it obtains from customers as  
612 long as the customers remain with the supplier's service, and the LOAs must be provided to the  
613 host utility and/or the Commission upon request.  
614

615 Q. Do you agree that it is appropriate to allow suppliers to sign up customers through  
616 telephone solicitations and to allow customers to enroll with suppliers over the  
617 Internet?

618 A. Yes. My understanding is that, in the Customer Select program, suppliers may sign up  
619 customers via written and telephonic means, and it appears that customers may also sign up with  
620 suppliers over the Internet, although this is not stated in the tariffs and should be, as Ms.  
621 Alexander notes. The use of each of these enrollment methods is appropriate.

622

623 Q. Ms. Alexander notes that that there are no guidelines or requirements in the tariffs  
624 that explain the disclosure and customer authorization obligations of a supplier when it  
625 signs up customers with written methods or over the Internet. GCI EX 1.0, p. 27.  
626 Please comment.

627 A. With respect to written enrollments, the authorization and disclosure methods in use in the  
628 electric industry should be used. This would require the use of a document that contains  
629 information that is similar to the information contained in the LOA. With respect to Internet  
630 enrollments, Ms. Alexander refers to procedures that are in place in Ohio and Pennsylvania.  
631 Ibid, pp. 26-27. These procedures should be considered for use in the Customer Select  
632 program. Finally, with respect to telephonic enrollments, the procedures cited in Nicor Gas'  
633 tariffs appear to be adequate.

634

635 Q. Ms. Alexander discusses Nicor Gas' credit and collection policies. Please comment.

636 A. Ms. Alexander points out that Nicor Gas's tariffs do not allow for a clear distinction between  
637 such matters as regulated and unregulated charges, how partial payments should be allocated  
638 and how Nicor Gas will distinguish between regulated and unregulated charges in its collection

639 programs. Ms. Alexander suggests that Nicor Gas' tariffs should be changed to make such  
640 distinctions, assuming that Nicor Gas offers single billing services. GCI EX 1.0, p. 29. I agree.

641  
642 With respect to partial payments submitted by customers to Nicor Gas, Ms. Alexander  
643 recommends that money collected by Nicor Gas be applied to all of Nicor Gas' charges,  
644 present and outstanding. Any money left over would then be remitted to the supplier. With  
645 some reluctance, I agree, primarily because this policy is consistent with my understanding of the  
646 policy in effect in the electric choice programs. It also has the advantage that it would reduce  
647 the chance that a customer might be disconnected because of non-payment of Nicor Gas'  
648 charges. On the other hand, the policy has drawbacks. The policy is not consistent with how  
649 LIHEAP money would be applied, the policy could increase the likelihood that customers  
650 would become subject to late fees imposed by their suppliers, and, since they would be last to  
651 be paid, the policy seems unfair to suppliers. On balance, though, I agree with Ms. Alexander  
652 on this point.

653  
654 Ms. Alexander recommends that Nicor Gas' collection activities should only be triggered by  
655 untimely payment of Nicor Gas's regulated charges. Ibid., p. 30. I agree. An example will  
656 make it clear why this is important. When a customer chooses an alternative supplier, its Nicor  
657 Gas charges will drop considerably, by something like two-thirds or so of the average bill it paid  
658 to Nicor Gas prior to its switch to the new supplier. Suppose, after the switch, that the  
659 customer is continually late with its payments to Nicor Gas, and Nicor Gas is permitted to

impose a deposit upon the customer. The amount of the deposit should be based on the customer's distribution charges to Nicor Gas, rather than on the amount it formerly paid to Nicor Gas or on the amount the customer pays to the alternative supplier.

**Q. Ms. Alexander states that Nicor Gas should cease providing a customer's credit and bill payment history to a supplier, even if the supplier has obtained the customer's authorization. GCI EX. 1.0, pp. 36-37. Please comment.**

**A.** I agree. It is my understanding that most of the electric utilities will not provide a customer's credit or payment history in response to an authorized supplier's request for customer information. This is clearly expressed in the relevant page of MidAmerican Energy Company's electric distribution tariff, which is attached to my testimony as ICC Staff Exhibit 5.4.

I should note, however, that in the event that a supplier functions as an account agent for a customer, the supplier could learn of any outstanding charges the customer owes to Nicor Gas. This could also happen if suppliers are allowed to offer single billing services, and Nicor Gas is permitted to require suppliers to collect for Nicor Gas the outstanding charges associated with Nicor Gas' sales service.

**Q. Ms. Alexander states customers should be afforded a short amount of time to rescind their decision to switch to a supplier, without penalty. GCI EX. 1.0 p. 47. Please comment.**



681 A. I would like to agree. However, I am not aware of any right that an energy customer would  
682 have to rescind its decision to switch to a supplier, without a cancellation penalty, except,  
683 perhaps, in cases, as Ms. Alexander notes, when customers purchase goods and services worth  
684 more than \$25 after being solicited through a door-to-door sales approach. Ibid., p. 49.

685  
686 If customers cannot unilaterally terminate their contracts with suppliers, then a customer who  
687 wishes to cancel its contracts with its supplier would have to obtain the supplier's agreement to  
688 cancel the contract. Note that even if the customer asked Nicor Gas to switch it back to Nicor  
689 Gas service, the customer's contract with the supplier would likely still be in effect. Also note  
690 that if the supplier agreed to terminate a contract with a customer, the customer might still be  
691 obligated to honor its contract until the customer's request to switch to Nicor Gas service could  
692 be processed, which might take a number of weeks.

693  
694 **OTHER ISSUES**

695 **Q. It does not appear that Nicor Gas plans to send letters to customers notifying them of**  
696 **their participation in the Customer Select program. Rather, suppliers have the**  
697 **responsibility to send customer notification letters. Please comment.**

698 A. The customer notification letters sent by the host utility after the utility receives a notice from a  
699 supplier enrolling the customer in a choice program is primarily intended as an anti-slamming  
700 measure. If a customer receives a notification that it has been switched, and believes that it has  
701 not authorized the switch, the customer would be in a position to take action to have the  
702 enrollment cancelled. Each of the electric utilities provide such a notification letter to their

703 customers...Judging from the virtual (if not total) absence of reported slamming since the electric  
704 market opened in 1999, the notification letters have served a useful purpose. Nicor Gas should  
705 be required to send notification letters to customers as soon as possible after receiving  
706 enrollment notices from suppliers. A copy of the letter that Commonwealth Edison Company  
707 sends to customers is attached to my testimony as ICC Staff Exhibit 5.5.

708

709 **Q.** ~~Does this conclude your rebuttal testimony?~~

710 **A.** Yes.

**The Unexpected Role of Agents in the Illinois Electric Market**  
**November 2000**

**ICC Staff Report to the Commission**

Introduction

Electric utilities have for decades allowed their bundled services customers to authorize "agents" to make decisions on the customers' behalf with respect to their utility service. Most frequently, customers have used agents simply as intermediaries in the bill payment process. For example, a customer might designate its accountant to pay its electric bills, or a multi-site company might have its bills sent to the corporate headquarters, where the bill is paid by the corporation's accounts receivables department. Customers have also paid their electric bills through currency exchanges and other types of retail operations that send bill payments to utilities. Less frequently, customers have given agents authority to make rate selections on their behalf. A utility would typically honor a request made by a customer's designated agent to switch the customer to a different, more cost-effective tariff because utilities have generally accorded essentially the same rights to a customer's agent as to the customer itself.

Historically, the percentage of bundled customers utilizing agents was very low (perhaps on the order of one out of every one hundred thousand customers). As deregulated markets have evolved, however, it has become common for energy suppliers to combine agency activities with more routine commodity transactions. It has become a standard practice for natural gas suppliers to also act as agents for their gas transportation customers.<sup>1</sup> Moreover, now that electric delivery services have begun in Illinois, a very high percentage of delivery services customers are employing agents. According to figures provided by the utilities that have delivery services customers, the percentage of delivery service customers using agents has reached upwards of 90%.

Despite the agents' presence in the natural gas market, it appears that extensive agency activities in the Illinois electric market were not anticipated at the time that the Commission was adopting rules and reviewing tariffs that govern the behavior of market participants. Electric utilities do not have tariffs in place that specify how they will interact with agents, except for the tariff provisions governing supplier access to customer usage information. Further, the Commission has adopted tariffs governing consolidated billing (i.e., single billing) that apply only to certificated Retail Electric Suppliers ("RESs").

The failure of the rules and tariffs to recognize agency activities, in and of itself, would not create the potential for concern. Any new market is likely to attract "middlemen" who possess more knowledge about the intricacies of the market than do newer market participants. Middlemen often contribute to market development by stimulating customer interest in the market and providing information to customers. In the case of electric

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<sup>1</sup> Discussions with gas companies indicates that the majority (or perhaps the vast majority) of gas transportation customers employ agents.

delivery services, for example, many Power Purchase Option ("PPO") customers have switched to delivery services only after attracting the interest of an agent.

Despite the positive effects of agent activities, Staff recognizes that irresponsible or inadvertent agent activity could have a harmful effect on customers as well as the development of the electric market. It is not difficult to imagine circumstances in which an agent's failure to perform its duties, even if the agent is a certificated RES, could result in customer harm.

The harms may be minor, or they may be more serious. It might not be problematic, for example, if an agent were to neglect to forward a utility's bill insert to its delivery services customers, especially if the bill insert does not concern safety, reliability, or the customer's service. On the other hand, however, a more serious problem could develop if ~~an agent acting on a customer's behalf does not pay the customer's bills~~. This circumstance could result in the assessment of late charges against the customer, or perhaps disconnection of the customer's electric service. In such cases, it is not immediately obvious how the Commission might assist customers in seeking compensation for any harm caused by an agent's actions.

Given the potential for customer harm, and the lack of attention that agent activities have received since the electric market opened about one year ago, it seems prudent to examine how agents operate in the Illinois market. This report presents a brief overview of agent activities, and the concerns that could arise due to those activities.

In the conclusion of this report, Staff recommends that the Commission direct Staff to talk to interested parties to in an informal workshop setting to discuss agency activities and their effect on the market. At the conclusion of the workshop process, Staff will present a recommendation to the Commission as to whether a proceeding should be instituted that would examine the need for rules or guidelines for market participants who perform agency activities.

#### Why has the subject of agents not received much attention?

There are probably two main reason why the subject of agents and their activities in the electric industry have not received much scrutiny, until now. First, their activities are essentially unregulated and thus governed principally by traditional "Agency Law", unless they are also regulated by the Commission as RESs. Perhaps more importantly, the Commission has not received even minimal numbers of complaints from customers regarding the agents active in the natural gas transportation market, where customers routinely employ agents.<sup>2</sup>

#### Who are agents and what do they do?

<sup>2</sup> The growth of the Internet has encouraged the development of operations through which a customer may pay all of its bills, including its electric bills. The operations of such entities are not discussed herein, but should undoubtedly be monitored in the future.

Any person a customer authorizes could become an agent for and act on behalf of that customer. However, it is important to understand that, while the agents operating in the Illinois electric market that have signed up the vast majority of delivery services customers are RESs, some agents are not RESs.<sup>3</sup>

The basic function of an agent operating in the Illinois electric market, regardless of whether it is operating as RES, is to take actions related to energy services on behalf of customers. Agents arrange for an electric supply to be provided to the customer, and make all tariff and rate selections, including authorizing the switch from bundled service to delivery services. Since a non-RES cannot sell power to retail electric customers, the distinction between agents that are not RESs and those that are RESs becomes important. A "RES-Agent" has options available to it that are not available to the non-RES, including the resale to customers of the power it purchases on the wholesale market. (RES-Agents may also place the customer on the PPO, either directly, as in the case of the non-RES, or with the discount available through the "PPO Assignment" option of Section 16-110 of the Public Utilities Act.)

Agents also provide a consolidated billing service, and in this capacity, receive the bills sent by the delivery utility and pay the bills on their customers' behalf. If the agent is a RES, and chooses single billing, the billing services are subject to the Commission's "Single Billing" rules described in Section 16-118, Part 451, and the host utility's single billing tariff approved by the Commission. However, as discussed below, very few RESs have chosen to be certified under Part 451 to offer single billing services.

Agents generally seek to obtain authorization from customers to act on their customers' behalf with respect to the relationship between the retail customer and its electric utility. The authorization typically allows the agent to perform any action with respect to utility service that the customer itself might perform, such as initiating service changes from the utility, and paying bills. With respect to delivery services customers, an agent could initiate a switch from bundled service to the PPO (or switch the customers back to bundled service). The agents that have obtained "power-of-attorney" rights from customers might be called "account agents."<sup>4</sup>

Finally, agents typically combine their electric activities with other energy-related services, such as the sale of natural gas or energy consulting.

#### How many customers have employed agents?

Staff asked Ameren, ComEd, Illinois Power, and MidAmerican Energy, the only utilities that have customers taking delivery services, to gather and provide to Staff information concerning agent activities in their respective service territories. The

<sup>3</sup> Staff believes that some of the non-RES agents wish to be RESs, but have been unable to meet the reciprocity restrictions in Sec. 16-115(d)(5) of the Act.

<sup>4</sup> Agents that limit their activities to the provision of billing services are called "billing agents."

information was gathered during Summer, 2000. Several trends emerged from the utilities' information:

1. The number of customers employing agents is very high. Preliminary numbers show that, depending on the utility, about 50-93% of delivery services customers are using agents.
2. According to ComEd's figures, only about 10% of PPO customers do not use agents. Similarly, only about 10% of ComEd's RES supply customers do not employ agents.
3. Most agents perform both billing agent and account agent functions.
4. Relatively few customers are taking service under the PPO without the involvement of an agent.

What does the presence of agents and agency activities imply about the market?

First, one implication is that there is an information gap in customers' knowledge about the deregulated marketplace that is being filled by agents. At least with respect to electric supply, many potential delivery services customers seem to be unaware not only about their service options but also that agents are performing activities that could be performed by the customers themselves. Consider that, as noted above, some 9 out of every 10 PPO customers have employed an agent. These figures imply that very few customers find out about the PPO on their own. They also imply that few customers understand that they can sign up for the PPO simply by calling the local utility.<sup>5</sup>

Second, agents are encouraging the development of the electric market. As noted above, evidence indicates that many, or perhaps most, customers sign up for delivery services only after being marketed to by an agent.

Third, the single billing requirements and associated tariffs are being only minimally used. This is partly due to the fact that many agents market the PPO, rather than resell power purchased on the wholesale market. However, most of the agents that resell power also are not following single billing requirements. It is not difficult to see why this is so. The single billing tariffs impose restrictions and costs on suppliers that are not imposed on entities that do not provide billing services pursuant to Part 451 and the single billing tariffs. For example, Part 451 requires single-billers to post a bond or other security to demonstrate that it maintains sufficient financial resources to provide the service for which it has a certificate of authority. This cost is not imposed on agents that do not offer billing services under single billing guidelines.

Additionally, the tariffs and Section 16-118(b)(iv) of the PUA "require the alternative retail electric supplier or other electric utility that elects the billing option provided by this

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<sup>5</sup> ComEd customers can use the "PPO Calculator" on ComEd's "Powerpath" web site to determine the level of savings they would obtain if they signed up for the PPO.

tariff to include on each bill to retail customers an identification of the electric utility providing the delivery services and a listing of the charges applicable to such services." Listing the utility's distribution charges on the bills suppliers issue to customers is only required of single billers. As far as Staff is aware, the only obvious advantage that a supplier would obtain by operating as a "single biller" rather than as an agent is that single billers generally receive customer bills electronically rather than through the U.S. mail. The implication is that, at least as far as billing is concerned, the Illinois electric market is developing differently than the General Assembly and the Commission may have anticipated.

#### How do utilities interact with agents?

While the utilities do not have a contractual relationship with the agents, the utilities generally view the rights to be accorded to agents working on behalf of customers as essentially the same rights that customers would enjoy with respect to their utility service. Agents are typically allowed to switch customers between tariffs, order services for customers (such as additional metering services), receive and pay bills, or even file complaints on behalf of customers.

To be accepted by a utility as an agent who is entitled to act in place of a customer, an agent must furnish to the utility a document signed by the customer that clearly states that the customer is giving the agent that authority. The utility will honor the customer's agency request until the utility obtains a document signed by the customer that terminates the customer's relationship with the agent.<sup>6</sup>

Once the entity is accepted by the utility as an agent, all correspondence normally sent to the customer will instead be sent to the agent.<sup>7</sup> This means that each month some agents are receiving hundreds of pieces of mail, including customer bills, from utilities, and transmitting a large volume of mail to their customers.

With the growing number of agents and the variety of services they perform on behalf of customers, the utilities are becoming increasingly concerned about the appropriate way to respond to agency requests. Utilities anticipate that they will eventually need to make changes to their customer information and billing systems if the volume of agency activities continues to increase. In response to these and other concerns, some utilities are preparing Commission filings that may describe the rights and responsibilities when they request to represent customers

#### The Agents' Perspective

Staff discussed agency issues with several entities that perform agency activities. A few main points emerged from these discussions. First, concerning additional regulatory oversight of agency activities, the RES-Agents believe that they are already

<sup>6</sup> One utility will also accept a customer's oral request to terminate the customer/agent relationship.

<sup>7</sup> One utility also plans to send about half a dozen notices, including the late payment notice, to the customer as well as the agent. These notices directly concern the customer's service, or the customer's premises.

~~comprehensively regulated by the Commission. Nevertheless, the agents generally agreed that additional regulatory guidelines or requirements for agents might be appropriate, since irresponsible agent actions could damage the marketplace and ultimately result in severe restrictions on the activities of legitimate agents.~~

Second, Staff was told by a number of RES-Agents that they would prefer to offer billing services under single billing requirements, rather than in an unregulated fashion, principally because single billers can receive billing information electronically. Despite this advantage, RESs generally do not offer their billing service under single billing guidelines. One reason is that single billing is not available to RESs under the PPO, which is a service offered by utilities. A second reason is that RESs find the requirements of Sec. 16-118 to be very restrictive and not always compatible with their preferred marketing strategies. For example, an offer that is popular with potential delivery services customers is a percentage reduction from the amount the customer would pay under the customer's bundled rate. However, Sec. 16-118 requires a single biller to identify the utility's delivery charges on the RES's single bill. Thus, RESs would be obligated to change their marketing offers (or at least their bills) if all RESs were to be required to offer billing services under Sec. 16-118.<sup>8</sup>

Third, regarding the customer correspondence sent to agents, most agents informed Staff that they routinely send to their customers much, or most, of the correspondence that they receive from the utilities. Information that is not sent to customers often concerns messages that promote products sold by the utility or its affiliates, or advertisements for other products that the RES might also wish to sell.

Fourth, some of the agents pointed out that they provide services that benefit the delivery utilities, as well as customers. For example, the agents stated that they have detected billing errors unnoticed by the delivery utilities that may affect multiple customers. The agents stated that, since they typically pay customer bills as soon as they arrive – that is, before the bills are sent to their customers and thus before the agents themselves are paid – having a third party involved in the billing transaction may provide utilities' an additional degree of assurance that their bills will be paid promptly.

#### Policy Concerns

*There are numerous potential concerns with customer reliance on agents.* Generally, the concerns regard the consequences of agents neglecting to pay their customer's bills, or failing to forward to customers the utility correspondence that is required by Law and/or the Commission to be sent to customers.

#### A. Non-payment of customer bills

At the heart of the customer/agent relationship is the agent's responsibility to pay utility bills on behalf of its customers in a timely manner. If bills are not paid on-time, the customer could very quickly have problems. One problem that could arise is that late fees will be charged to the customer's account, which the agent will pay if the agent hopes to

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<sup>8</sup> The requirements of Sec. 16-118 are explained in more detail below.



keep customers in the dark about the agent's failure to pay bills as required. The customer might be unaware that its bills were not being paid properly, since reminder notices will be sent by the utility, as will all correspondence, to the agent, rather than the customer. Even if the bills are eventually paid, the customer's credit history might be negatively impacted. Ultimately, a repeated failure to pay customer bills could result in the customer's service being disconnected. Restoration of service would likely require the customer to pay all money owed to the utility (even if the customer had already paid the agent), with, perhaps, additional penalties imposed on the customer, such as a security deposit.

By contrast, if a RES is operating under single billing rules, and chooses to "guarantee" that it will pay its customers' bills (the payment option that all utilities have in their single billing tariffs), a RES's failure to forward to the utility the money remitted to it by customers will most likely not affect customers. Moreover, a RES that demonstrates an inability to adhere to the utility's single billing tariff could be prohibited from offering single billing services.

#### B. Part 451 and Part 410

As noted above, most agents, RESs and non-RES alike, are not certified pursuant to Part 451 to offer billing services and thus do not issue single bills pursuant to the requirements of the single billing tariffs. One concern is that customers receiving bills from agents that are not operating under single billing tariffs may be somewhat more at risk of not having their payments made to the agents ultimately being credited to the customer's account.

Part 410, which as of this date is in the Second Notice stage of rule revision and adoption, would require (among other things) that RES and electric utility bills clearly identify the charges for their services. Agents who are not RESs apparently are not subject to Commission rules, so the bills that agents send to customers would not be subject to Part 410 requirements, either. It is an open question whether agents who are also certificated RESs, but acting in the "agent" capacity must abide by Part 410 rules when they send bills to customers only.

#### C. Informational messages

By Staff's count, utilities are required by law or rule to send some 15-20 pieces of information to customers. This is usually accomplished through bill inserts.<sup>9</sup> When a customer employs an agent, the utilities' policy has been to send all information to the agent. However, only if the agent is a RES operating under Section 16-118 and single billing tariffs must this information be sent to customers. Consequently, only a customer of a single-billing supplier would have assurance that it is receiving the information it would receive had it not employed an agent.

<sup>9</sup> A list of these requirements is attached to this report.

A glance at the list shows that the consequences of customers failing to receive certain information could potentially be quite severe. For example, a customer who does not receive a final notice would not be aware of a pending disconnection. Customers who do not receive safety messages might be unsure of the number to call to report emergencies.

**D. Consequences of acting irresponsibly**

As Staff understands the utilities' current policies, an agent who acts irresponsibly might be able to continue to provide agency services. One question is, should agents be barred from acting on behalf of customers when they have not fulfilled the terms of their agency agreement, such as not forwarding a customer's payment to the utility? Another issue that should be reviewed is the question of whether utilities should have the right to decide whether they will accept an agent if they believe they have information that the agent has performed poorly or irresponsibly in the past.

**E. Customer Education**

If agents are to continue to operate, it would be important to inform customers of type of activities that agents (some of whom are not RESs) are performing. The information might include a description of typical agent activities, as well as a discussion of typical contract terms offered by RESs that reflect agency activities.

**F. Repackaging of delivery services**

The utility's delivery services rates are tariffed. Once the agent "repackages" the utility's bill, i.e., combines the charges for its services with charges for the delivery portion of the bill, there does not appear to be any requirement that the amount shown on the bill as the utility portion (if it appears at all) is the same as that sent by the utility.

**Legal Considerations**

A retail customer can appoint a third person as its agent on at least some matters related to the customer's receipt of electric services without the agent doing any of the things that would make it an ARES under Sections 16-102 and 16-115 of the Act. By the same token, an entity performing functions that would clearly make it an ARES could also act as agent on behalf of a retail customer. The challenge for the Commission will be to draw the line between the two. One possible guide for doing so would be to construe the definition of "ARES" in a way that furthers the goals of Article XVI by subjecting to regulation those entities, but only those entities, whose regulation as ARES is warranted in order to "ensure that all customers continue to receive safe, reliable, affordable, and environmentally safe electric service." 220 ILCS 16-101A(d).

As for the term "agent," it appears in several places in the Act. Sec. 16-104(b), which addresses the subject of "aggregation," recognizes that agents will exist, although in this Section the duties of an agent are described as "purchas[ing] power and energy and delivery services on behalf of customers"..., rather than fulfilling billing or account agency functions:

The electric utility shall allow such aggregation for any voluntary grouping of customers, including without limitation those having a common agent with contractual authority to purchase electric power and energy and delivery services on behalf of customers in the grouping.

Section 16-122 of the Act states in part that upon the request of a person who presents verifiable authorization and is acting as the customer's agent, and payment of a reasonable fee, electric utilities are required to provide to the authorized agent the customer's billing and usage data.

Section 16-115A of the Act does not mention agents, but among other things, requires all ARES to comply with Section 2EE of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE] before a customer is switched from another supplier. The latter Act applies, by its terms, to electric service providers, a term defined in Section 6.5 of the Attorney General Act [15 ILCS 205/6.5] in terms that are different from the PUA Section 16-102 definition of "ARES." This creates the possibility that some entities may be required by Illinois law to receive a "letter of agency" as a prerequisite to offering service as an electric service provider, but not be required to be certificated as ARES.

As it monitors the development of the electricity market and informally fields questions from potential participants in that market, Staff sees the less-than-precise PUA Section 16-102 definition of "ARES," as central to the resolution of issues related both to agency and aggregation. Staff sees a need for broader consideration of this definition, in the context of other provisions that were enacted at the same time, in an effort to aid the Commission in establishing a more precise line between the activities of an ARES and those of other market participants.

(The Commission should note that, in the event it defers consideration of PUA-related agency and aggregation concerns, affected customers remain entitled to the existing general protections and remedies that traditional "Agency Law" affords.)

#### Recommendations and Final Comments

Staff believes that the Commission should direct Staff and other parties to seek input from market participants regarding agents and their activities. This course of action would be received favorably by many market participants, particularly utilities, which are interested in obtaining direction from the Commission as to how they should interact with agents. As noted above, Staff has been informed by more than one utility that tariff filings are being prepared that would incorporate guidelines or requirements for agents.

A few options are available to gather information. First, the Commission could institute a Notice of Inquiry, perhaps followed by a rulemaking, that would identify requirements that agents would have to follow if they wished to act on behalf of customers.

Second, the Commission could direct Staff to seek input from interested parties by convening workshops on the topic. The latter course is preferable, as Staff's present opinion is that requirements for agents would be more appropriately placed in utility tariffs, or the terms and conditions that are associated with those tariffs, rather than in a Commission rule. However, Staff does recognize that, if requirements or standards for agents and agency activities are to be adopted, it might be preferable to require all utilities to institute uniform requirements or standards, especially if it is found that the resolution of tariff issues hinges in some measure on an appropriate construction of the definition of "ARES." Generally, a rulemaking might be the means to accomplish a common set of requirements, but, in this instance, Staff believes that additions to utility tariffs would also be appropriate. If the Commission directs Staff to conduct workshops, Staff will provide a recommendation at the conclusion of the workshop process as to whether a proceeding should be initiated to consider agency topics.

Regardless of whether requirements appear in a Commission rule or utility tariffs, the requirements imposed on agents should address certain matters. First, the requirements should specify the information that a customer should receive directly from the utility. The purpose of this requirement would be to minimize the possibility that customers who employ agents would not receive critical information that the Commission has ordered should be sent to customers. At a minimum, such information might include reminder and disconnection notices. Second, the requirement should identify the procedures that an agent should use (or that the utility could accept) to identify itself as a customer agent. Third, the requirements should identify the conditions, if any, under which a utility could refuse to deal with an agent.

Notices and Information to Customers required by the Law, Commission rule, or approved tariff.

Information or Notice Type	Reference	Customer Class Affected
<b>Delivery Services</b>		
Confirmation of supplier switch	Company Tariffs	
Environmental disclosure	Sec. 16-127	
ARES must disclose prices, terms & conditions prior to switch	Sec. 16-115A(e)(ii)	Res & Sm. Commercial
ARES must substantiate claims -- fuel types, etc.	Sec. 16-115A (e)(iii)	Res & Sm. Commercial
ARES must send itemized bills	Sec. 16-115A (e)(iv)	Res & Sm. Commercial
ARES must send annual disclosure statement	Sec. 16-115A (e)(iv)	Res & Sm. Commercial
Provide educational materials	Sec. 16-117 (g)(1)	Res & Sm. Commercial
Notice of PPO contract termination	Company Tariffs	
<b>General - Bundled &amp; Delivery Services</b>		
Disconnect Notice- 8 days	Part 280	
Tree-trimming - vegetation management	P.A. 91-902	
Required info on bills-- meter rdgs, usage, description of rates; optional rates, rate changes	Part 410.210	
Utility needs to read meter, make repair, or provide maintenance at customer's premise		
Request for deposit	Part 280.70	
Life Support-publicity and annual renewal	Sec. 8-204/ co. tariffs	Res. Only
Notice of special winter rules	Sec. 8-206	Res. Only
Reliability - customer survey	Sec. 16-125 (b)	
Planned outages /power fluctuation, etc	Sec. 16-125 (g)	
ComEd - right/procedure to file outage claims	Docket 99-0022/Sec. 16-125	

**Northern Illinois Gas Company**  
**d/b/a Nicor Gas Company**

**Response to:**

**Illinois Commerce Commission**

**III. C. C. Docket Nos. 00-0620 and 00-0621 Consolidated**

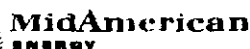
**First Data Request**

EPS-01      Q.      Please provide any information in Nicor Gas Company's possession that describes, or provides an estimate of, the percentage of gas transportation customers who have employed agents who are authorized to act on behalf of such customers with respect to tariffed services offered by Nicor Gas.

A.      The Company does not have the information to accurately measure the number of transportation customers that have authorized agents to act on their behalf. All *Customer Select* participants would be considered to have agents since a Supplier delivers gas for them. For non-*Customer Select* transportation customers, customers change agents from time to time, handle their own accounts and may use more than one agent. This makes it difficult to determine how many transportation customers currently have authorized agents.

However, using the customer's bill mailing address as a proxy for determining the number of non-*Customer Select* transportation customers using an agent, over 90 percent of transportation customers appear to have agents.

Company Witness: Albert E. Harms



MIDAMERICAN ENERGY COMPANY  
Schedule of Rates For  
Electric Service in Illinois

Docket Nos. 00-0620/0621  
(Consolidated)  
ICC Staff Exhibit 5.3  
Ill. C. C. No. 3  
1<sup>st</sup> Revised Sheet No. 12  
—Canceling Original Sheet No. 12

## Customer Switching (cont.)

### Terms and Conditions Between Delivery Service Customers and Suppliers

- The following information must be disclosed to the Customer in the terms and conditions provided by a RES or MSP to a Customer who has agreed to purchase Power and Energy or Metering Services from the Supplier:
  - The rate charged by the RES or MSP and the existence of any additional charges which the Customer may be required to pay in order to complete Delivery Services transactions;
  - The LOA or the Letter of Authorization authorizes the RES or MSP to receive customer information from the Company;
  - All electric Power and Energy and /or Metering Services associated with the account number provided in the DASR will be switched;
  - Specifications of any charges that may be assessed by the RES or MSP for switching RESs or MSPs; and
  - If additional charges may apply, a statement of disclosure noting so.

### Customer Notification

- The Company will notify Customers by U.S. Mail of DASR approval and that they will be switched to an alternative RES. At a minimum, the notification will include the following language:
  - This notification confirms your choice to change your electric supplier. Your new supplier is \_\_\_\_\_. If you have any questions please call them at XXX-XXXX.
  - Company will continue to be your provider of delivery services. If you have any questions on your delivery services (e.g., outage) please call us at XXX-XXXX.
- If, after receipt of a confirmation letter, a Customer contacts the Company indicating they do not want to switch to the RES indicated in the confirmation letter, the Customer must contact that RES to resolve the dispute.

### New or Moving Customers

- Customer switching procedures for new Customers or Customers moving from a previous premise will be according to the terms and conditions of the Turn-On/Turn-Off section of this tariff schedule.

Issued October 26, 2000  
Filed in compliance with the Commission's  
October 4, 2000 Order in Docket 99-0013

Effective January 1, 2001

Issued by James J. Howard, Vice President



MIDAMERICAN ENERGY COMPANY  
Schedule of Rates For  
Electric Service in Illinois

Docket Nos. 00-0620/0621  
(Consolidated)  
ICC Staff Exhibit 5.4

Ill. C. C. No. 3  
1<sup>st</sup> Revised Sheet No. 9  
Canceling Original Sheet No. 9

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## Customer Information (cont.)

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### Information to be Provided

- Upon request, the Company will provide the following Customer information to requesting parties to the extent it is readily available:
  - Usage history for the prior 24 months (energy and demand);
  - Load profile assignments (for load profiled Customers);
  - Hourly load information (for non load profiled Customers);
  - Delivery rate classification;
  - Meter information;
  - Dates of service
- Information will be provided no later than 5 business days after receipt and validation of the request.
- Information will be provided for the current Customer only. Usage information in the Company's records for the account requested that does not pertain to the Customer currently taking service at the requested premise will not be provided.
- Billing information will be limited to usage information and associated time periods and will not include any dollar amounts or credit information.
- Information will be provided one time only per Customer authorization.

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### Fees

- The Company will charge all requesting parties (with the exception of Customers) \$5.00 per meter for providing Customer information.
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Commonwealth Edison Company

## Open Access Implementation Plan

February 15, 2000

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### Confirmation of a Switch

(Current Date)  
Customer Name  
Mailing Address  
Mailing City, State, Zip,

Account Number  
New Electric Supplier:  
Current Supplier:  
Effective Date:  
Service Address

Congratulations on deciding to participate in customer choice!

We received notification that you are switching to a new supplier for your electric energy needs as noted above. ComEd will be your provider of delivery services (the facilities including poles, transformers and wires which carry and distribute the electricity provided by your electric supplier).

To facilitate your transition from ComEd to the new supplier, please provide access to your meter(s) on the effective date noted above so that your meter(s) can be read. The effective date is the date your new electric supplier begins providing you with service.

If you have any questions or require additional information regarding your new electric supply service, please contact your new electric supplier or your agent, if applicable. If you have any questions regarding delivery services, please contact a ComEd Customer Service Representative at 1-800-Edison-1 (1-800-334-7661).

Thank you.

ComEd